

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

HERMOSA BEACH CITY ELEMENTARY  
SCHOOL DISTRICT.

OAH CASE NO. 2013090477

ORDER GRANTING MOTION FOR  
STAY PUT

On September 13, 2013, Parents on behalf of Student (Student) filed a due process request (complaint) accompanied by a separate motion for stay put. In support of his motion, Student attached a declaration from his father and copies of the January 24, 2013 Individualized Education Program (IEP) and the May 17, 2013 amended IEP. The Hermosa Beach City Elementary School District (District), the respondent, has not filed a response to Student's motion.

In his motion, Student claims that the last agreed and implemented IEP was on May 17, 2013.

FACTS

Student, who is autistic, is currently a first grader and is eligible for special education and related services. Student's IEP team convened his annual IEP meeting on December 19, 2012. The team reconvened on January 14, 2013; and January 24, 2013. On May 17, 2013, the IEP team reconvened for an IEP amendment meeting. Student's parent consented to the May 17, 2013 amended IEP. The free appropriate public education (FAPE) offer made to Student was for the remainder of school year 2012 – 2013, the 2013 Extended School Year (ESY) and school year 2013-2014. The amended IEP was implemented.

Student contends he is entitled to stay put for the placement and services contained in the amended IEP for school year 2013-2014. The amended IEP contains the following for school year 2013-2014:

- (1) Specialized education instruction in a special day class for 180 minutes daily;
- (2) Individual speech and language services (SLS) for two, 30 minute sessions per week;

- (3) Group SLS for three 90 minute sessions per week;
- (4) Group Occupational Therapy (OT) for one 30 minute session per week;
- (5) OT consultation for once per month for 30 minutes;
- (6) Behavior Intervention Services (BIS) five times per week for 390 minutes (weekly total would equal 1, 950 minutes) by a nonpublic agency (NPA);
- (7) BIS supervision for 12 times per month for 720 minutes by a NPA; and
- (8) BIS four times per month for 240 minutes in a clinic setting by a NPA;<sup>1</sup>

#### APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); 56505, subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) However, if a student’s placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student’s “stay put” placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64; *G.M. v. Dry Creek Elementary School District* (E.D. Cal., Dec. 10, 2010) 2010 WL 5136181 at \*2.)

Stay put is designed to preserve the status quo by insuring that the child remains in the last placement that the school district and parents agreed was appropriate. (*Millay v. Surry* (D. Me. 2008) 584 F.Supp.2d 219, 230-231, citing *Verhoeven*, 207 F.3d at p. 10.)

Stay put is an automatic injunction issued against a school district to prevent school officials from removing a child from the public school classroom during the completion of the reviewing process. (*School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 373 [105 S.Ct. 1996, 85 L.Ed.2d 385].) Stay put does not authorize a court to order parents to leave their child in a particular placement which the parents feel is not appropriate. It operates to permit parents to unilaterally change placement during the reviewing process without consent of school district officials at their own financial risk. (*Burlington*, 471 U.S. at pp. 373-374.) Here, the moving parties are attempting to compel

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<sup>1</sup> In his declaration, Student’s parent states that he was informed that the 240 minutes are to be delivered by the NPA in a clinic setting. The amended IEP states that these services are classified as “other” for “delivery/class type.”

Parents to maintain a placement and services which they believe is not appropriate. This is not the purpose of stay put and is beyond authority of OAH.

### DISCUSSION

Here there is no dispute that the last consented to and implemented IEP is the amended IEP dated May 17, 2013. Student is entitled to receive the placement and services contained in the amended IEP. Thus, Student's motion for stay put is granted.

### ORDER

Student's motion for stay put is GRANTED and the District shall provide Student with the placement and services included in the May 17, 2013 amended IEP as follows:

- (1) Specialized education instruction in a special day class for 180 minutes daily;
- (2) Individual speech and language services (SLS) for two 30 minute sessions per week;
- (3) Group SLS for three 90 minute sessions per week;
- (4) Group Occupational Therapy (OT) for one 30 minute session per week;
- (5) OT consultation for once per month for 30 minutes;
- (6) Behavior Intervention Services (BIS) five times per week for 390 minutes (weekly total would equal 1, 950 minutes) by a nonpublic agency (NPA);
- (7) BIS supervision for 12 times per month for 720 minutes by a NPA; and
- (8) BIS four times per month for 240 minutes in a clinic setting by a NPA

Dated: September 26, 2013

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings